IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3899 OF 2005

M/s.Joshi Home Makers : Petitioner

V/s.

Shri Govind Rajaram Lele & Ors. : Respondents

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Mr.P.S.Dani for the petitioner.

Mr.H. Bhave i/b. M/s.Bhave & Co., for the respondent no.1.

Mr.A.H.Palekar, Asstt. Govt. Pleader for the respondent nos.2 and 3.

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CORAM : S.A. BOBDE, J.

July 22, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Bhave for the respondent no.1 and Mr.Palekar, learned Asstt. Govt. Pleader for the respondent nos.2 and 3, appear and waive service of rule.

Heard by consent.

2. The petitioner challenges the order of the Divisional Joint Registrar, Co-operative Societies, Pune Division, dated 5.5.2005 in appeal under section 152 of the

Maharashtra Co-operative Societies Act, 1960, hereinafter referred to as the "Act". The Divisional Joint Registrar while deciding the appeal, rejected the petitioner's objection to the tenability of the appeal. The petitioner objected on the following grounds:

He submitted before the appellate authority that there is no appeal against the refusal by the Deputy Registrar, Co-operative Societies, to the reservation of name of the proposed society and for permission to open bank account. The respondent no.1 Govind Rajaram Lele is the Chief Promoter of the proposed society who had applied for reservation of certain name for the proposed society and for permission to open a Bank account. This application was refused by the Deputy Registrar against which an appeal has been filed and entertained by the Divisional Joint Registrar, who is the designated appellate authority under section 152.

3. All that needs to be seen is whether such an appeal is maintainable.

4. Mr.Dani, the learned counsel for the petitioner, submitted that an appeal lies only against an order or decision under section 4 and the other sections referred

to in section 152. Section 152, to the extent it is relevant, reads as follows:-

> "**152. Appeals**.--(1) An appeal against an order or decision under sections 4, 9, 11, 12, 13, 14, 17, 18, 19, 21, 21A, 29, 35, 77A, 78, 79, 85, 88 and 105 including against an order for paying compensation to a society shall lie.--
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> (a) if made or sanctioned or approved by the Registrar, or the Additional or Joint Registrar on whom powers of the Registrar are conferred, to the State Government.
>
> (b) if made or sanctioned by any person other than the Registrar, or the Additional or Joint Registrar on whom the powers of the Registrar are conferred to the Registrar."

Undoubtedly, an appeal would be tenable if the order refusing to reserve the name and refusing permission to open a Bank account to the Chief Promoter would be an

order under section 4. But on a plain reading of section 4, it is not so. Section 4 reads as follows:-

> "**4. Societies which may be registered**:-- A society, which has as its objects the promotion of the economic interests or general welfare of its members or of the public, in accordance with co-operative principles or a society established with the object of facilitating the operations of any such society, may be registered under this Act:
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> Provided that, no society shall be registered if it is likely to be economically unsound, or the registration of which may have an adverse effect on development of the co-operative movement, or the registration of which may be contrary to the policy directives which the State Government may, from time to time, issue."

5. Mr.Bhave, the learned counsel for the respondent no.1, submitted that the order refusing to reserve the name and

also refusing permission to open a Bank account is basically an order under section 4 above since one of the requirements of registration provided by rule 4(1)(b) of the Maharashtra Co-operative Societies Rules, 1961 is a certificate from the Bank stating the credit balance therein in favour of the proposed society. Rule 4(1)(b) reads as follows:-

> "R. 4(1) Application for Registration and Registration fee.-- Every application for registration of a society under section 8 shall be made in Form 'A' in Marathi, Hindi or English, and shall, subject to the provisions of sub-section (2) of section 8 and sub-rules (2) and (3), be signed by the applicants and shall, in addition to four copies of the proposed bye-laws of the society, be accompanied by--
>
> (a) .....
>
> (b) a certificate from the Bank or Banks stating the credit balance therein in favour of the proposed society:"

6. According to the learned counsel for the respondent no.1, rule 4(1)(b) provides the pre-requisites for registration of a society and the order refusing permission to open Bank account must be construed as an order made under section 4 which provides for registration of a society. The argument has no merit and, in my view, must be rejected. Rule 4(1)(b) above only provides the pre-requisite for obtaining registration of a society. It does not contemplate the application for permission to open a Bank account and certainly not the reservation of name. Therefore, it would be stretching the language of the law and imagination too far to hold that an administrative order of the Deputy Registrar refusing reservation of a name and refusing permission to open Bank account amounts to an order or a decision under section 4 which provides for the societies which may be registered nor can the order in question, viz., refusing to reserve the name and refusing to open a Bank account be construed to be an order under section 9 registering or refusing to register a society.

7. Section 9 of the Act reads as follows:-

> "**9. Registration**.--(1) If the Registrar is satisfied that a proposed society has

complied with the provisions of this Act and the rules, or any other law for the time being in force, or policy directives issued by the State Government under Section 4, and that its proposed bye-laws are not contrary to this Act or to the rules, he shall within two months, from the date of receipt of the application register the society and its bye-laws.

(2) Where there is a failure on the part of the Registrar to dispose of such application within the period aforesaid, the Registrar shall, within a period of fifteen days from the date of expiration of that period refer the application to the next higher officer and where the Registrar himself is the registering officer, to the State Government, who are which, as the case may be, shall dispose of the application within two months from the date of its receipt and on the failure of such higher officer or the State Government, as the case may be, to dispose of the application within that period, the society

> and its bye-laws shall be deemed to have been registered and thereafter the Registrar shall issue a certificate of registration under his seal and signature within a period of fifteen days.
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> (3) Where the Registrar refuses to register a proposed society, he shall forthwith communicate his decision, with the reasons therefor, to the person making the application and if there be more than one to the person who has signed first therein.
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> (4) The Registrar shall maintain a register of all societies registered, or deemed to be registered, under the Act."

Therefore, the contention on behalf of the learned counsel for the respondents that the opening a Bank Account and reservation of name is a step-in-aid for the registration of a society and, therefore, an order under section 4 and 9 of the Act and, therefore, appealable cannot be accepted.

8. Mr.Dani, the learned counsel for the petitioner, has

submitted and, in my view, rightly that an appeal is a creature of a statute and can be entertained only in the circumstances provided for dealing with the provision. As noted above, the appellate provision clearly provides a provision under which an appeal lies. As discussed above, the order against which the respondent no.1 filed an appeal is not an appellate order and, therefore, the appeal ought to have been dismissed under section 152 of the Act.

9. Accordingly, appeal no.15 of 2005 filed by the respondent no.1 before Divisional Joint Registrar, Co-operative Societies, Pune Division, is hereby dismissed. This shall not prevent the respondents from availing of any other remedy as may be available to him, in law.

10. The rule is made absolute in the aforesaid terms.

Sd/-

S.A. BOBDE, J.